

# The Gazette of India

EXTRAORDINARY

PART II—Section 3

PUBLISHED BY AUTHORITY

---

No. 11] NEW DELHI, MONDAY, JANUARY 10, 1955

---

ELECTION COMMISSION, INDIA

NOTIFICATION

*New Delhi, the 10th December 1954*

**S.R.O. 115.**—Whereas the election of Shri Lala Ram, as a member of the Legislative Assembly of the State of Vindhya Pradesh, from the Newari constituency of that Assembly, has been called in question by an Election Petition presented under Part VI of the Representation of the People Act, 1951 (XLIII of 1951), by Shri Laxmi Narain Naik, S/o Shri Gopal Das, Village Nim Chauni, P.O. Sakrar, District Tikamgarh;

And whereas the Election Tribunal appointed by the Election Commission in pursuance of the provisions of section 86 of the said Act for the trial of the said Election Petition has, in pursuance of the provisions contained in section 103 of the said Act, sent a copy of its Order to the Commission;

Now, therefore, in pursuance of the provisions of section 106 of the said Act, the Election Commission hereby publishes the said Order of the Tribunal.

On an appeal filed by Shri Lala Ram the Supreme Court has set aside the said Order of the Tribunal declaring the election of the successful candidate to be void *vide* the Supreme Court's judgment, dated the 18th October, 1954 (Annexure II).

IN THE COURT OF THE ELECTION TRIBUNAL, NOWGONG,  
VINDHYA PRADESH

ELECTION PETITION No. 258 of 1952

PRESENT:—

1. Shri S. N. Vaish, B.A., LL.B., Retd. District and Sessions Judge, U.P.—*Chairman.*
2. Dr. L. N. Misra, M.A., LL.B., Ph.D., Retd. District and Sessions Judge, U.P.—*Member.*
3. Shri P. Lobo, Advocate, Supreme Court—*Member.*

- 
1. Shri Laxmi Narain Naik, s/o Shri Gopal Das, Village Nim Chauni, P.O. Sakrar, District Tikamgarh—*Petitioner.*

*Vs.*

1. Shri Lal Ram, s/o Dhandu, r/o Binwara, P.O. Sakrar, District Tikamgarh (Congress),
2. Shri Sita Ram, s/o Shri Nand Kishore, r/o Niwari, P.O. Newari, District Tikamgarh (K.M.P.P.),

3. Shri Shyma Lal, s/o Nand Kishore, r/o Ghogsi, P.O. Uldan, District Tikamgarh (Congress),
4. Shri Sunnu Lal, r/o Orchha, P.O. Orchha, District Tikamgarh (Independent)—*Respondents*.

This is an election petition filed by Laxmi Narain Naik calling in question the election of the Respondent No. 1 who was a Congress candidate and who had been returned to the Legislative Assembly of Vindhya Pradesh from Newari constituency which is a single member Constituency. The petitioner prays that the election of the Respondent No. 1 as well as the election as a whole in this constituency be declared void on the grounds set forth in the petition and the list of the particulars including defective ballot boxes, their tampering, the exercise of undue influence, coercion and intimidation, the non-compliance with the rules and orders by Government servants, the improper acceptance of the nomination of the Respondent No. 1 and the other corrupt practices and illegalities to which a detailed reference shall be made presently under the issues.

The Respondent No. 1 alone contested the petition by filing a written statement wherein he categorically denied all the grounds for declaring the election to be void and presses that certain be not allowed to go to trial. Issues were thus struck of which Nos. 11(b), 15, 16, 17 and 18 were first heard and disposed of in our Order, dated January 24th, 1953. As a result of our findings on the said preliminary issues and within the limits specified therein, evidence was, however, allowed to be given on the following remaining issues which we take up now for disposal:—

#### REMAINING ISSUES

1. Are the allegations contained in clauses (a) to (f) of para. 5 of the petition correct? If so, what is the effect?
2. Were the ballot boxes, used in the Election, defective and contrary to the mandatory provisions of law, could they be unlocked and ballot papers taken out therefrom without their seals being broken and has this resulted in a serious non-compliance with the provisions of the Constitution and the Acts and Rules made for holding Elections. If so, how is the petition affected thereby?
3. Was there any non-compliance, on the part of the presiding officers, with the provisions of the Rules 32 and 33 of the Representation of the People's (Conduct of Election and Election Petitions) Rules, 1951, as alleged in clauses (h) and (i) of para. 5 of the petition?
4. Was there any non-compliance with, or breach of, the Rules 46 and 50 on the part of the Returning Officer as alleged in clauses (j) of para. 5 of the petition? If so, what is the effect?
5. Were the arrangements for the transport of the ballot boxes and papers and for their safe custody, defective as alleged in clause (k) of para. 5 of the petition and were the ballot boxes etc. in fact approached by various people with ample opportunity to tamper them. If so, what is the effect?
6. Were the ballot boxes tampered with and ballot papers from petitioner's boxes extracted and introduced in to those of the Respondent No. 1 and were fresh and un-used ballot papers introduced into the boxes of the Respondent No. 1 after the closing of the poll and before the termination of counting with the connivance of the Respondent No. 1, his agents and supporters? If so, what is the effect?
7. Had the Respondent No. 1 any contract with the V.P. Government before and at the time of his nomination for removing and taking fuel wood from Orchha jungle? Does his holding a licence for the same amount to a disqualification? Did the Respondent No. 1 as coparcener of his nephew Kirpa Ram hold a licence for the sale of controlled cloth from the V.P. Government at the time of his nomination and has he still got the same? Did the Respondent No. 1 hold any share in a licence for working a passenger lorry from Newari to Tikamgarh jointly with Shri Tewari of Jhansi and Shri Chintaman Bhargava? Was he a member of the State Transport Authority, Rewa or the Transport Board, Rewa, at the time of his nomination? Was the Respondent No. 1 wrongly accepted as a candidate on account of any of the above disqualifications, if any?
8. Did the V.P. Government and its officials of all ranks actively participate in the elections by perpetrating the acts as alleged in clause (p) of para. 5, with the active connivance of the Respondent No. 1 and his party? If so, what is the effect?

9. Did the Congress organisation commit any of the acts as alleged in clause (q) of para. 5? If so, what is the effect?

10. Did the Chief Commissioner and other high officials of V.P. Government commit the acts as alleged in clause (r) of para. 5? If so, what is the effect?

11. (a) Is the return of election expenses filed by the Respondent No. 1 false in material particulars and has it not been filed in the prescribed manner? If so, what is the effect?

12. Are the allegations contained in Nos. 1 and 2 of the list correct? If so, what is the effect?

13. Did the Respondent No. 1 or his workers and agents commit the practice alleged in No. 3 of the list? If so, what is the effect?

14. Did the Respondent No. 1 commit the corrupt and illegal practices alleged in No. 4 of the list? If so, what is the effect?

19. To what relief, if any, is the petitioner entitled?

#### FINDINGS

*Issue No. 1*—This issue was framed on the basis of the allegations in clauses (a) and (f) of para. 5 of the petition. Those allegations relate to the conduct of the Assistant Returning Officer and the Returning Officer during the counting of the votes which took place on 3rd February on which date, after 19 boxes of the petitioner had been counted, it was found that the 20th box contained the parliamentary ballot papers and so the counting was postponed that day. They also relate to the incidents of the 9th February, on which the remaining counting took place. The parties evidence fully establishes that, at Nahgawan Khas due to the negligence of the presiding officer of that booth, the Assembly boxes were used in the polling compartment of the parliamentary constituency, and *vice versa* and so the 20th box, on the 3rd, was found to contain the ballot papers of parliament and subsequently the 3 missing Assembly ballot boxes were obtained from the place where the parliamentary ballot boxes had been kept and they contained the ballot papers for the Assembly, of all the 3 candidates, of this constituency. The mistake in the use of the ballot boxes at that polling station was duly rectified by the Election Commission and then counting was finished on the 9th February. It is further established that the Respondent No. 1 was not at all responsible for any of the charges levelled against him in these allegations. That seems to be the reason why this issue has not at all been pressed by the learned counsel for the petitioner. The defects complained of in these allegations cannot be said to have materially affected the result of the election so far as this issue is concerned. This issue is, therefore, decided against the petitioner.

*Issues Nos. 2, 5 and 6*.—These issues relate to the ballot boxes being defective, to the unsatisfactory arrangements about their transport and to the alleged tampering therewith, after the polls. They can conveniently be taken up together.

It is admitted that ballot boxes used during the election throughout the Vindhya Pradesh were of the Godrej Type. For reasons detailed in our judgments in Election Petition No. 259 of 1952, dated this day, it is held that the Godrej Type ballot boxes contain an inherent defect, in as much as the dog, which is the only locking device in these boxes is so thin that, with a slight pressure applied with the thumb at the outer centre of the knob, it passes through the space which is created between the lid of the box and the inner disc of the knob, leaving the knob free to be rotated and the box to be opened without at all touching the paper seal in the window of the box and consequently there has been a non-compliance with the provisions of the second sentence in Rule 21(1) of the R.P.R., 1951.

For reasons, detailed in our judgment in the Election Petition No. 259 of 1952 aforesaid, it is further held that, the instructions to the presiding officers which were issued by the Election authorities in this State about the manner of sealing of these boxes, probably in ignorance of this inherent defect in the frame of these ballot boxes, were such that, if the ballot boxes were sealed in accordance with these instructions as they do appear to have been sealed, there is bound to remain a distance of at least one inch between the knots on the twine and the wax seal at the loose ends thereof with the result that, after the knots are shifted with the help of a pin or needle nearest to the wax seal, the boxes can be easily opened by rotating the knob after applying the pressure with the thumb at the outer centre of the knob and consequently it is held that there has been a non-compliance with the provisions of Rule 21(5) of the R.P.R. also in the matter of the affixation of the seals.

But the mere non-compliance with the aforesaid provisions of the R.P. Rules is no ground for declaring an election to be void. Under section 100(2)(c), it lay upon the petitioner to establish that the result of the election had been materially affected by such non-compliance. In other words, it lay upon the petitioner to prove that the arrangements for the transport of the ballot boxes were defective, that the ballot boxes were accessible to a mischief maker and the ballot boxes were tampered with and the ballot papers from the petitioner's ballot boxes were removed and introduced into the ballot boxes of the Respondent No. 1 as alleged by him. The statements of petitioner's own witnesses, P.Ws. 27, 28 and 29 (Head constables of Newari, Pirthipur and Orchha) and P.W. 54 (the petitioner himself) show that the ballot boxes were always kept under police guard and all care to ensure safety of the ballot boxes and the sealed envelopes containing the election papers had been taken. The petitioner's grievance is that the ballot boxes of Kundhar and Sendri were kept in the house of Majju Mehtey in Sendhri and, therefore, they were accessible to all. From the statements of R.Ws. 48, 49, 103, 105, 106, 110, 112, 113, 118, 120, 124, 125, 126, 128, 129 and 131, it is quite clear that there was no police outpost at Sendhri and, so during this election, a temporary outpost was created and the police party with the ballot boxes remained in that house and that arrangements for the safe custody of the ballot boxes during the period they remained in the Thana Malkhana were quite sound.

On the basis of the entries in the General Diaries of the police stations concerned, the petitioner's learned counsel contends that the ballot boxes of Bijore, Uborā, Bhelsa Maharajpur, Nahgawan Khas and Chandrapura, reached the police stations where they were to be kept rather late. Shri Shive Shanker Misra, R.W. 126, the election officer of this district, swears that a programme was chalked out from before and the police party used to carry the ballot boxes and the sealed packets according to that programme. He further swears that the delay at some places was due to the shortage of police guards for escorting the ballot boxes. It is further to be borne in mind that the places in this constituency were not at all connected by rail. From some of these places the ballot boxes had to be taken either as head loads or in bullock carts to the railway stations and then by rail, when it was available. It appears that transport was avoided during the night for reasons of safety. The petitioner has failed to establish that the ballot boxes were ever accessible to any mischief or that they were ever in fact tampered with.

The petitioner's learned counsel refers to the statements of P.W. 27 and R.W. 131 and contends that on the 3rd February, according to these two witnesses, Kamlapet took away the ballot boxes from the Thana of Newari at 3 p.m. This Kamlapet was the election clerk for this district. He then refers to the statement of Kamlapet (R.W. 113), according to whom the ballot boxes were brought from that Thana to the counting place at Newari at 8 p.m. by the Circle Inspector and the Sub-Inspector. He contends further that in this manner the ballot boxes have been shown to have remained at some unsafe place. It appears that the counting was to be done in Newari school on the 3rd February but suddenly the R.O. fell ill and he could not come to Newari and the Assistant Returning Officer, Shri Chandrapal Singh, was then deputed by the R.O. to conduct the counting and that officer reached Newari late and then he sent for the ballot boxes. It may be that the ballot boxes were removed from the Thana to the school, by the election officer who had reached there with his staff earlier at 3 p.m. and this might be the cause for the entry in the General diary, to that effect. But the Police Officers were always on guard on the ballot boxes. On the 3rd the candidates and their counting agents had all been awaiting the arrival of the Returning Officer. Such being the case in spite of the discrepancy as to the actual time when the ballot boxes were taken from the Thana, there is no proof of actual tampering on that day.

Relying on the statement of Shri Chandrapal Singh, P.W. 52, the petitioner's counsel contends that on the 9th February, when this officer came to Newari in a bus along with the counting party, he was surprised to find that certain election papers, forms No. 10, and marked electoral rolls, etc. were found unsealed in an unlocked trunk in that lorry. We have carefully studied the statement of Chandrapal Singh and the other evidence on the record and to us it appears that, on seeing the forms No. 10 and other papers in that condition, Chandrapal Singh lost his nerves. He himself was the officer who was in charge of the counting on the 3rd February and it was through his negligence that those papers were not kept properly locked. He thought that by that negligence on his part his whole career was at stake. This seems to be the reason why he sent a telegram and then a letter through a special messenger requesting the Returning Officer to come personally and to conduct the counting. It is admitted that the

counting on the 3rd was done in the presence of the candidates and their counting agents. Nothing from which an inference of tampering with the ballot boxes might be drawn has been brought to our notice. For all the confusion that is said to have prevailed on the 9th February, particularly in the mind of Chandrapal Singh, nothing was shown to have been done in an illegal or irregular manner. The petitioner's learned counsel has brought to our notice the fact that 5 check slips do not bear the names of the candidates. It is admitted that the counting of the boxes was done candidatewise according to their number in the list of validly nominated candidate and the check slips for all the candidates had been prepared in the very beginning. If, by oversight, the name of the candidate was not written on some of them those slips were of the candidate whose counting was then in progress and such an omission cannot be said to have had any bearing on the result of the counting.

It is, therefore, held that the petitioner has failed to prove that the result of the election has been materially affected by the non-compliance with the provisions of Rules 21(1) and (5) of the R.P. Rules, 1951, and that the election cannot be declared void on account of mere non-compliance with those provisions. These three issues are, accordingly, decided against the petitioner.

*Issue No. 3.*—This issue is based on the allegations in clauses (h) and (i) of para. 5 of the petition. The allegations in clause (h) aforesaid are:—

“Because the presiding officers in all the polling stations of the constituency refused to make up into separate packets and seal all the papers and documents mentioned in rule 32 of the R.P. Rules, 1951, in the presence of the petitioner or his agents and thereby deprived the petitioner from exercising his statutory rights of affixing his seal on such packets.”

The statements of petitioner's own witnesses P.Ws. 27, 28, 33, 39, 40, 41, 51 and 52 indicate that there were separate packets. There is no evidence on behalf of the petitioner that he or his polling agents expressed any desire to affix petitioner's seal on any of the packets and the question of refusal of such request does not at all arise. The allegations of this clause (h) have not been established.

About the allegations in clause (i) the very existence of Form No. 10 of all the polling stations, on this record, is proof that the presiding officers did prepare the accounts of the ballot papers as required by the Rules. The petitioner's learned counsel has specially brought to our notice Forms No. 14 about Mudara.

He contends that the ballot papers found in the ballot boxes of the three candidates of this constituency at this polling station were 786 while according to Form No. 10, Ex. A-94, that number ought to have been 784 and thus 2 ballot papers in excess were found in these boxes of Mudara. Shri H. N. Zutshi was the presiding officer at Mudara and the polling at this place took place on 27th January. Shri Zutshi was the presiding officer at booth No. 12-A of Newari and in the Form No. 10 which he prepared about the polling station No. 12-A of Newari he has mentioned the serial Nos. of ballot papers received by him to be 556301 to 562300; and those serial Nos. make total of ballot papers for that polling station to be 6,000 although for the 3 polling stations, namely, 12-A Newari, Mudara and Asathi, that presiding officer was, in all given 2,800 ballot papers. Ex. 168 is the Register containing the total and serial numbers of the ballot papers given to each presiding officer for all the stations at which he was to preside. That Register shows that Shri Zutshi was given only 2,800 ballot papers for the Assembly bearing Serial Nos. 562401 to 565200. The ballot papers bearing Serial Nos. 556301 to 562300 were not at all given to that presiding officer from the office of the Returning Officer. It is thus obvious that Shri Zutshi has carelessly and incorrectly prepared the Form No. 10, Ex. A-95. According to this Form No. 10, 498 ballot papers ought to have been found in the 3 ballot boxes of polling station No. 12-A (Newari). A perusal of the check slips for that polling station reveals that only 493 ballot papers were found in those boxes. Those check slips further show that those ballot boxes did not contain any invalid ballot paper. It is thus obvious that 5 ballot papers which were issued at Newari (12-A) polling station were not introduced into those ballot boxes.

The polling at Newari took place on 25th January, 1951 and the polling at Mudara took place on 27th January, 1951, as already mentioned above, Mudara is only about 3 miles from Newari. The two ballot papers in excess in the 3 boxes of Mudara might have been due to some voter having introduced into one or more of the ballot boxes at Mudara the two out of the five missing ballot papers issued at Newari on the 25th.

This discrepancy does not appear to have been noticed either by the officials or candidates at the time of counting otherwise it would have been thrashed out then and there. It does not appear to have been noticed at the time of

evidence otherwise the petitioner's counsel would have put this discrepancy also to Kamlapet, R.W. 113, as he did about the discrepancy of 30 ballot papers of a Newari polling station (with which we will presently deal). Had this been done by the petitioner's counsel, the Tribunal would have recounted the valid ballot papers found in the three ballot boxes of Mudara. The cancelled ballot papers also would have been counted to see if Zutshi committed a mistake in the counting of the cancelled ballot papers. The Tribunal would further have compared the serial numbers of the ballot papers found in the box of each of the 3 candidates with the serial numbers noted against each elector in the marked electoral roll of Mudara and thus ascertained in the box of which of the 3 candidates, the two ballot papers in question were found. During the arguments also the petitioner's counsel did not make any attempt to get this done and to show the box or boxes in which these two ballot papers in excess were found. The result is that we do not know in the ballot box of which of the 3 candidates those 2 ballot papers, which were apparently unauthorised, were found. Even if they be assumed to have been found in the box of the Respondent, they were invalid ballot papers and the correct number of valid ballot papers of the respondent would thus be 637 instead of 639. The Respondent won this election by a majority of 4,853. It is thus obvious that, whether the excess of two ballot papers was either due to a mistake in preparing the Form No. 10 by Zutshi, or due to a mistake in counting, or due to 2 ballot papers issued at Newari (12-A) polling station on 25th having been wrongly inserted into Mudara ballot box (boxes on 27th, that mistake cannot be said to have materially affected the result of the election and so the Tribunal did not consider it worthwhile to have the counting of ballot papers done all over again. One other point has been raised by the petitioner's counsel and it is this. At Newari there were two polling stations one numbered 12-A and the other numbered 12-B. In Form No. 10, Ex. A-16, the presiding officer mentioned only 12, while in Ex. A-95, the presiding officer mentioned Newari against the heading "Polling station". This defect in the Form No. 10 led to a confusion at the time of counting in as much as the result of counting of the boxes of 12-A appears to have been noted in check slips, against polling station No. 12-B and *vice versa*, with the result that in the ballot boxes of 12-A, 30 more ballot papers were found than the number entered in Form No. 10 (which was really Form No. 10 for 12-B). This also was an accidental error on the part of the presiding officers of those two stations and cannot be said to be material.

This issue is, therefore, decided against the petitioner.

**Issue No. 4.**—This issue is based on the allegations in clause (j) of para. 5 of the petition. This is not pressed by the petitioner's learned counsel and there is no evidence to prove these allegations. It is, therefore, decided against the petitioner.

**Issue No. 7.**—The petitioner's learned counsel relies on sections 7(d) and (e) of the R.P. Act.

The learned counsel for the respondent contends that section 7 does not apply to Part C States like Vindhya Pradesh. For reasons detailed in our judgment, dated this day in petition No. 306 of 1952, *Ganga Prasad Shashtri Vs. Panna Lal & others*, it is held that section 7 of R.P. Act, 1951 applies to Part C States as well.

The petitioner's counsel relies on the statement of P.W. 54 and contends that the Respondent No. 1 had a contract for taking fuel from Orachha Forest and used to pay Rs. 2 per cart load to the V.P. Government for the same and so he is disqualified under section 7(d) of the R.P. Act, 1951, R.W. 121, the Range Officer of this Forest swears that the Respondent No. 1 had purchased fuel from the Government at the rate of Rs. 2 per cart load. In the first place the respondent's purchase of fuel from the Government cannot be said to be a contract for the supply of goods to the State. In the second place, the Respondent, as R.W. 127 swears, had purchased about 400, or 500 cart loads of fuel on paying the price only upto June or July 1951. There is nothing to show the contrary. It is, therefore, held that at the time of his nomination, the respondent did not hold any contract for purchasing fuel from the State.

Again, the petitioner's counsel relies on the statement of the petitioner himself, P.W. 54, to show that the respondent had a four annas share in a lorry which used to run at Tikamgarh. The respondent swears that he never had any share in any lorry. There is no documentary evidence to show that the respondent was partner in any lorry concern. The mere statement of the petitioner on the point cannot be believed. We see no reason to disbelieve the respondent on the point and hold that the respondent had no share in any lorry business.

It is next contended by the petitioner's counsel that the respondent was a member of the Transport Board of the State. The respondent admits that he was once the member of that Board; but he swears, that he had resigned the

membership of the Board on 1st December, 1951. The Respondent is supported on the point by the telegram, Ex. 204, dated 1st December, 1951, sent by him to the Chief Secretary of the State, asking the Chief Secretary's order, dated 2nd December, 1951, Ex. 205, accepting that resignation and the telegram of the Chief Secretary, Ex. 206, dated 2nd December, 1951, sent to the respondent informing him of the acceptance of his resignation. The nomination to the Assembly election was made on 5th December, 1951. Hence we hold that, at the time of his nomination, the respondent was not a member of the Transport Board.

The petitioner's counsel contends that the respondent's nephew and coparcener, Kirparam, held a licence to sell controlled cloth at the time of his nomination and hence the respondent also had an interest in the contract for the performance of services undertaken by the State within the meaning of section 7(d) of the R.P. Act. The respondent swears that he had no such interest in that licence. In the first place a licence to sell controlled cloth cannot be said to be a contract. In the second place, whatever arrangements were made by the State for the distribution of cloth were done by virtue of the Essential Supplies (Temporary Powers) Act, 1946. That was an Act to provide for the continuance, during a limited period, of powers to control the production, supply and distribution of, and trade and commerce in, certain commodities, and there is no indication either in the preamble of the Act, or in its provisions, that the Government was undertaking the task of supplying cloth to the people. All that the Act does is to authorise the imposition of certain restrictions in the matter of production, supply and distribution of certain commodities. The exercise of such restrictions does not make the State responsible for the supply of the commodities concerned. Hence we hold that the State had not undertaken the supply of cloth and for this reason, even, if for arguments' sake, the respondent be taken to have any interest in the licence of sale of controlled cloth. The respondent is not hit by the provisions of section 7(d) of the Act. Hence we hold that the respondent did not suffer from any of the disqualifications mentioned in section 7 of the R.P. Act.

*Issues Nos. 8, 9, 12, 13 and 14.*—The petitioner's learned counsel has not built up his arguments according to these issues as they were framed. He contends that undue influence by Vindhya Pradesh officials of all ranks and by members of the Congress organisation prevailed extensively in this constituency and the election has not been free and fair and hence, under section 100(1) of the R.P. Act, the election be declared to be wholly void. This is the whole theme of his arguments about all these issues. We take up each instance of the alleged undue influence, pressed by him, *seriatim*.

1. It is contended on behalf of the petitioner that S. N. Bhargava, the Tahsildar of Newari called subtenants of Mazra Durgapur and asked them to pay rent direct although they used to pay the same to Durga Prasad, the tenant in chief. He relies on the statement of P.Ws. 1, 2, 15 and 16, who state that Bhargava called them to the tehsil about 15 days before the polls (*i.e.* about 10th January) and asked Dhawal Mahtey to take them out and explain things to them. They further state that Dhawal Mahtey took them out and there told them that they should vote for the Congress candidate, otherwise the Tehsildar will lock them up and thereupon they said that they would do so if that was his view but that they had already paid up the rent to Durga Prasad. Durga Prasad, R.W. 3, who is the tenant in chief swears that he had deposited the entire rent in the Tehsil about the first week of January, *i.e.* before 10th January. P.Ws. 1 and 15 admit that, before they were called by the Tehsildar, they had decided to vote for the respondent. Such being the case, it seems quite unnatural that the Tehsildar should have at all called them as alleged by them. Then S. N. Bhargava, R.W. 103, swears that the names of subtenants were not at all entered in Tehsil papers, P.W. 16 also admits that he does not know if their names were recorded in Tehsil papers or not. This too, renders it highly improbable that the Tehsildar would call them. S. N. Bhargava aforesaid and Dhawal, R.W. 6, deny these allegations of the petitioner's witnesses. We do not feel at all impressed with them and hold that this instance has not been established.

2. The next contention is that the respondent himself exercised undue influence on the voters at Asathl. He relies on the statements of P.Ws. 3, 4, 6, 7, 21, 25 and 26. P.W. 3 states that in a meeting held in the village the respondent had said that if the voters did not cast their votes in the box of bullocks their lives would become difficult. P.W. 4 states that Ajodhia, Herprasad zamindar, Raghunath Mukhia, Sitaram and Lachman had said in that meeting that if they did not cast votes in the box of bullocks there would be some difficulty for them, although he admits that he himself did not attend that meeting. P.W. 6 does not state anything about the respondent's holding out any threat at the meeting

but he states that at the booth Raghunath and Herprasad had told people that if they did not cast the votes in the box of bullocks they would face difficulties and would suffer. P.W. 7 states that each of the parties who came to canvass in the village had said that if votes were not cast for it they would fall into difficulties. P.W. 21 and P.W. 25 merely state that Kadora, Mulu and Tanti had cultivated the land of Moria Tal which was in the name of Bajpai but Bajpai, respondent denies that the land is in his name. P.W. 26 states that the land of Moria Tal was given to Mulu and others on their undertaking to vote for the respondent. He further states that the respondent had also said that in case they did not cast votes for him they would be turned out of the village. This witness admits that he had gone to that place just to see the fun and that P.W. 25 also was present there but P.W. 25 does not state anything to that effect. This witness admits that he had come to give evidence before this Tribunal as the petitioner had led him to believe that he would get back his share in the Tal. Herprasad, R.W. 15, Raghunath, R.W. 7, Ghansham, R.W. 8 and the respondent, R.W. 127, all deny these allegations. We do not at all believe the P.Ws. on the point and hold that no undue influence was exercised either by the respondent or by the State officials at Assathi.

3. It is contended that undue influence was exercised at Nahgawan Khas. The petitioner relies on the solitary statement of P.W. 14 who states that Thakurdass, Manmohan, Bhagwandass, Jadu Mahtey, Shambhu Dayal and Shiamlal were saying that if they cast votes for the socialist they would face difficulties. This witness was the agent of the socialists. He states that those persons had said so while he was asking the people to cast votes for the socialist candidate. The first four out of these 6 persons, examined as R.Ws. 21, 22, 23 and 24, deny these allegations. We do not believe the P.Ws. and hold that no undue influence was exercised at Nahgawan Khas.

4. About the alleged undue influence at Mudara, reliance is placed on the statements of P.Ws. 17 and 18. P.W. 17 states that the respondent himself took the oath of Tulsi Ganga that on becoming a member of the Assembly he would get one resident of the village employed by the Government. He further states that subsequently 15 or 20 persons were asked to take the Ganga's oath to cast their votes for Bajpai. He also states that Shimalal Mukhia had said that in case they did not cast the votes in the box of bullocks it would not well with them. The statement of this witness about the Ganga oath is not corroborated. P.W. 18 states that Shimalal and Ajodhia were taking the ballot boxes with the symbol of bullocks on it to every house and were asking the people to cast votes in a box like that, telling them that in case they did not do so it would not be good for them. Shimalal, as R.W. 28 and R.Ws. 27 and 30 residents of this village deny these allegations and state that the respondent never came to the village during the election days at all. We do not believe the P.Ws. and hold that no undue influence was exercised at Mudara.

5. About the undue influence at Ghugwa Nahgawan reliance is placed on the statements of P.W. 2 and P.W. 15 who state that when the residents of Durgapur Mazra went to cast their votes at Ghugwa Nahgawan. Nannu the zamindar of that village reminded them of what took place at the Tehsil of Newari and asked them to bear that incident in mind. We have already disbelieved the petitioners witnesses about the alleged undue influence by S. N. Bhargawa in the Tehsil. Nannu, as R.W. 64 and R.W. 25 the respondent's polling agents at that booth, deny these allegations. We hold that no undue influence was exercised at this place.

6. About the undue influence at Gidkhani, reliance is placed on the statements of P.Ws. 19, 20 and 22. P.W. 19 states that one day before the polls Jagannath, the zamindar of Gidkhani, told him that in case he did not vote for the Congress he would be beaten with dandas and would not be allowed to live in the village. P.W. 22 states that 4 or 6 days before the polls the respondent asked Halka, Lachman, Bhagana and Permanad to canvass for him, telling them that they would be given land of Barar Tal. P.W. 20 states that Herdass, Thakurdass and Deoki Nandan told the villagers that they should cast votes for the Congress otherwise they would be badly threaten. Each of these three witnesses thus states differently and none of them is corroborated by anybody else. The respondent swears that he did not talk with anybody about the election. Jagannath, Deoki Nandan, Thakurdass, Herdass, Bhurey, Lachhu and Anandi, all residents of this village, as R.Ws. 167 and 173 deny these allegations. We hold that no undue influence was exercised at this village as alleged by the petitioner's witnesses.

7. About the undue influence at Sendhri, the petitioner's counsel relies on the statements of P.Ws. 30 and 31. P.W. 30 states that the respondent and Mangan Mahton came and asked people to take the oath of Tulsi Ganga to cast the votes



in the box of bullocks and they took that oath. This man, in his examination-in-chief, tried to show that he is the son of the Mukhia of the village but under cross-examination, had to admit that his father was never the Mukhia and that he had wrongly stated about his father being a Mukhia. P.W. 21 states that the respondent made Magan Mahton, Majju Zamindar, Kajju Chamar, Punna Chamar, Bansi Nar and Randhir Nar take the oath of Tulsi Ganga to vote for him. This witness is the parokar of the petitioner and he states that he never told the petitioner about this action of the Respondent. Magan and Majju, Zamindars, as R.Ws. 48 and 49, and R.Ws. 40 to 44, all residents of this village, deny these allegations. We hold that no undue influence was exercised or oath taken at this village as alleged by the P.Ws.

8. About the undue influence at Saket Bhairon, reliance is placed on the statements of the P.Ws. 32, 34 and 35. P.W. 32 states that about 10 days before the polls the respondents made Govind Singh, Baijnath, Thakurdas, Chhoti Misar, and Pancham, state on oath of Tulsi Ganga that they would get votes cast for him. He admits that he was a socialist and a worker of the petitioner but states that the respondent asked him also to do so but that he had told the respondent that he was the parokar of the socialists. His statement is highly unnatural. P.W. 34 states that Baijnath and others had said that votes be cast for the Congress otherwise the grazing of their cattle will be stopped. P.W. 35 states that Baijnath, Govind Singh, Thakurdas, Chhoti and all the residents of the village had taken the oath of Ganga for voting for the respondent (and not for getting votes cast for the respondent as alleged by P.W. 32). Thakurdas (R.W. 58) denies these allegations. We do not believe the petitioner's witnesses and hold that no undue influence was exercised at this village as alleged by the petitioner's witnesses.

9. It is contended that, at Sunonia, during the polls the respondent came up to the booth in his car along with some of his associates and entered the booth and asked his polling agent to get votes cast for him and, in the presence of the voters told the petitioner's polling agent that the votes will be cast for him and that ashes will be cast for the petitioner. It is further contended that when the presiding officer asked the respondent to go out of the booth, the respondent persisted in remaining there and then the presiding officer asked the police to get him out but the police also remained inactive. Reliance is placed on the statements of P.Ws. 39 and 43 and P.W. 33. P.W. 39 is the friend and polling agent of the petitioner. He has stated as already mentioned above. P.W. 43 corroborated P.W. 39 but he states that he was a mere onlooker and not even a voter. P.W. 33 is the presiding officer of Sunonia. This witness had sent a telegram, Ex. 60 to the Returning Officer from Barwasagar Railway Station at 17-30 hours on the 27th January to the following effect:—

"Polling work impossible. Kindly come immediately. Situation critical." Considering the distance of Barwasagar from Sunonia, the telegram must have been despatched from Sunonia at about 16 hours. He now states that no disturbance at all took place at Sunonia and that he had given this telegram simply because he had run short of sealing wax and money.

The respondent also sent a telegram, Ex. 66, at 19-5 hours from the same station to the following effect:—

"P.O. Baswan and Sunonia Distt. Tikamgarh illegally harassing Congress workers causing panic amongst voters. Immediate action solicited for peaceful voting on 29th at Bhelsa."

It may be noted here that this very presiding officer was to preside at Bhelsa on the 29th.

The respondent's version about his own telegram is that his polling agent, Abdul Gafoor, told him that the women voters were being asked the name of their husbands and that he had told the P.O. that the name of the husband be read out to a woman and if she shakes her head in token of her confirmation that should be taken as enough and she should not be asked to name her husband but the P.O. had told him that he would do only what was mentioned in his written instructions and nothing more. The Respondent has examined a host of witnesses on the point and let us see what they state.

R.W. 18 states that the police was stopping the voters at a distance of one jarib (which comes to about 22 yards) from the polling compartment. Then by putting leading questions, he was made to state that this was being done at a distance of 200 yards from the booth. R.W. 36 states that the police was stopping people near the Mahwa tree which was at a distance of 300 or 350 yards from the booth towards Barwasagar side and he names Jessu and Ghasiram as some of the persons who were sitting under the Mahwa trees. Jessu is R.W. 37

and his statement would show that the police were stopping the voters at a distance of 400 yards on the Herdolkhand side and from there allowing them to proceed singly; that after casting votes the voters were directed to return towards Barwasagar side; that he also proceeded accordingly and sat down under the Mahwa tree (on the Barwasagar side) where 40 or 50 others males and females were already sitting; that he remained sitting there till the respondent reached there in his car and asked him if everything was all right and he replied that everything was all right but the police were stopping voters at a distance of 350 or 400 yards. According to this witness there was no policeman near the Mahwa trees. R.W. 38 also states that the police was stopping the voters on the Herdolkhand side but he states that there were 2 policemen near the Mahwa trees also and they were trying to turn out people from under the Mahwa trees also but the people were refusing to go from there. Under cross-examination he states that the Mahwa trees also were on the Herdolkhand side and not on the Barwasagar side. R.W. 76 is Abdul Gafoor, the polling agent of the respondent at this booth. He states that he had told the respondent when he came into the booth that the election was over peacefully at Sunonia booth except that the police were preventing voters from coming to the booth in large numbers at a distance of 2 or 3 furlongs. He states that there was no talk at all between the respondent and the presiding officer, and thus contradicts the respondent's version. He, however, admits that he did not make any complaint against the presiding officer to the respondent. Here also he contradicts the respondent in as much as he does not mention that he had told the respondent that women were being asked the names of their husbands. The Tehsildar of Newari has been examined by the respondent as R.W. 103 and according to him the presiding officer had sent his polling officer to him for lac and money on the 26th, whereas, P.W. 33, the presiding officer, states that he had sent his polling officer to the Tehsildar for money and lac (sealing wax) in the morning of 27th and at noon, that very day, he had returned and told him that the Tehsildar did not give him those articles. According to P.W. 33 that telegram was sent by him because the Tehsildar had not supplied him the money and lac. R.W. 112, is the polling officer who went to Newari to leave the ballot boxes at the Thana at Newari on 26th January. He states that it was on 26th that he had asked the Tehsildar for lac and money. He also states that no talk took place between the respondent and the presiding officer. R.W. 115 is another polling officer of Sunonia and he introduces an additional reason viz. that the stock of wire was exhausted and it had been sent for by the presiding officer. R.Ws. 116 and 117 are the other polling officers of Sunonia. R.W. 116 also denies any conversation between the presiding officer and the respondent at this booth. R.W. 117 states definitely that the presiding officer had not harassed any Congress worker or voter, and thus contradicts the contents of the respondent's telegram Ex. 66. R.W. 120 is the Returning Officer of this district. This witness was examined on the 5th June. His statement shows that he had met the presiding officer, P.W. 33 and had enquired from him about the telegram, Ex. 60. This witness, for the first time, introduces that the complaint of the respondent was that women were being asked the names of their husbands and that the complaint of the presiding officer was that the respondent along with some of his workers had entered the booth and that the P.O. had considered that entry of the respondent and his workers into the booth as objectionable. R.W. 127 is the respondent himself. He states that when he reached this booth, his agent (Abdul Gafoor) told him that women were being asked the names of their husbands and that he had told the presiding officer that this should not be done but the P.O. had replied that he would not do anything which was not mentioned in his written instructions. He thus contradicts his own witnesses including the Returning Officer. Under cross-examination, the respondent admitted that none of his workers had complained to him, on 27th January, about the presiding officer's treatment towards any of them and thus in a way he himself concedes that the contents of his telegram, Ex. 66, were false.

This is the parties evidence about the incident at Sunonia. We have not the slightest hesitation in observing here that the presiding officer, P.W. 33, is deliberately concealing the true facts and is setting up a cock and bull story to explain his telegram, Ex. 60 and that the other polling officers of this station also who have been examined by the respondent, are telling lies and concealing the true facts. The question is whether we should believe the statements of P.Ws. 39 and 43 or not. P.W. 39 was the petitioner's own polling agent. He states that at about 1-30 P.M. the respondent reached the polling booth along with some of his companions in a motor car, that he went to the place where parchis were being distributed and where some voters were sitting, and others standing in a queue, and asked those voters to cast their votes in the box of bullocks. He further states that, thereupon, he asked the respondent not to canvass at the booth but the respondent told him to be quite, telling him further that votes will be cast for him and Phul (meaning ashes) would be cast for

Naik (petitioner). P.W. 43 states that the respondent went with his car into the booth area and there asked the voters to cast votes for him. He then states that the petitioner's polling agent asked him not to do so but the respondent refused to go out of the booth and remained there in spite of the presiding officer's asking him to go out on the objection of the petitioner's polling agent and that the police also remained inactive on the presiding officer's asking them to turn the respondent out.

The respondent, it appears, was the Chief Minister in Tikamgarh State before the formation of Vindhya Pradesh. It seems highly unnatural and improbable that a man of the position of the respondent would have asked the voters at that place at this eleventh hour to cast votes for him. Had he really done so, that action would have amounted to an illegal canvassing and exercise of undue influence on respondent's own part, done in the presence of the polling agent of the petitioner himself. The petitioner's agent would certainly and immediately have informed the petitioner of that illegal canvassing and the petitioner would certainly have alleged that corrupt practice on the part of the respondent in his petition and would have given its particulars in his list. But the petition and the list are both quiet about the Sunonia affair. Undue influence has been alleged in clauses (p) and (q) only of the petition and even in those clauses the Respondent No. 1 is not mentioned to have exercised any undue influence. Such being the case P.Ws. 39 and 43 cannot be believed when they state that the respondent had done canvassing at the booth. We have carefully considered all the circumstances and, removing the husk from the corn, it appears that the respondent did go in his car along with his friends upto the booth and entered the booth along with his companions; that the petitioner's polling agent objected to that entry and complained to the presiding officer who also considered that entry objectionable (as the P.O. appears to have complained to the R.O., R.W. 120) and asked him to leave the booth but the respondent refused to obey the presiding officer. The respondent, in all probability rudely behaved towards him. The P.O. then sent the telegram Ex. 60 and later on the respondent also sent the telegram Ex. 66, probably to counteract Ex. 60. The petitioner found the two telegrams among the election papers and built up the canvassing story on the basis of the telegram Ex. 60. The respondent, in his oral evidence, has tried to impress upon the Tribunal that he had left the car at a distance of 400 yards from the booth, that he had gone alone to the booth and that he first obtained the permission of the presiding officer for the entry into the booth and then entered it, although, under the Rules a candidate can always freely enter the booth during the polling hours. The mere entry of the respondent in the way as indicated by us cannot be said to amount to exerting undue influence on the voters. We, therefore, hold that no undue influence was exercised at Sunonia.

10. The last place at which undue influence is alleged to have been exercised is Orchha. Reliance is placed on the solitary statement of Chaturbhuj, P.W. 46, who states that Sunderlall Napit and the father-in-law of the respondent were telling the voters at the booth that the respondent was a Minister before and would again become a Minister and that anybody who did not vote for him would be seen to. He could not give the name of a single voter to whom this was said. No reliance can be placed on such an uncorroborated solitary statement. Sunnu Lal Napit, as R.W. 99 denies such a threat. It further appears from the respondent's oral evidence that the father-in-law of the respondent had died along before the elections. We, therefore, hold that no undue influence was exercised at this place. A passing reference was made by the petitioner's Counsel to the allegations in particulars Nos. 2 and 3 of the list. The allegations, in particular No. 2 are that the Respondent No. 1 and his agents openly offered that he had arranged with the officials concerned to get arms licences renewed and also new licences issued. In this aspect the support of the officials concerned was obtained and procured for the furtherance of the prospects of the Respondent No. 1 in the election.

The petitioner's evidence on the point comprises of the statements of P.Ws. 11, 30, 31, 32, 34 and 35. P.W. 11 is the Reader and Arms Clerk of the Office of the Deputy Commissioner, Tikamgarh and he gave his statement from the Register of Licence for Arms. His statement would show that from January, 1952 to December, 1952, 1,187 licences, including the renewed licences, were issued in this district and out of those licences only 24 were of Newarl police station. P.W. 30 states that when the respondent came to Sendhri he gave out that anybody who wanted licence for guns could have them. But P.W. 31 the other witness of Sendhri do not state anything about it. P.W. 32 is a resident of Sakat Bhairon and he states that Baljnath had said that if one votes for Congress he would be given sugar and licences for guns. He further states that after the polls Parbat Singh and Kanahya Lal Dhimar got licences for guns. P.W. 34 states that the gun licence of Moti Mehtar was suspended as he did

not vote for the Congress. P.W. 35 also makes a similar statement. On the basis of P.W. 30 it was contended that Girand Singh did propaganda work for the respondent and got a gun licence after the polls. This is all the petitioner's evidence on the point.

Girand Singh as R.W. 47 states that he cultivates 150 Bighas of land and for this reason an arms licence was given to him before the polls. He further states that recently for apprehending some dacoits he has been given another licence for a gun. Moti Mehtar is R.W. 29 and he denies his licence having been ever suspended. R.W. 120 the Deputy Commissioner of this district states that licences were issued according to rules and not on the recommendation of the respondent. The Respondent denies this allegation on oath. The petitioner never made any complaint about such canvassing on behalf of the Respondent to any of the election officer.

The allegations in particular No. 3 are that the Respondent No. 1 and his workers and agents threatened the intending voters with dire consequence if they did not vote for the Respondent No. 1. In this connection Har Narain Choudhri and Sattu Lal who were the supporters of the petitioner were given a beating by the police at the instance of the Respondent No. 1. A report was lodged and an inquiry started but no action was taken. There is a solitary statement of Harnarain, P.W. 13. He states that about 1½ months before the polls Devi Pershad, Patwari, called him and asked him to resign from the Socialist Party and join Congress. He refused to do so. He further states that a police constable named Durga Musalman came to call him, saying that a Socialist Neta wanted to see him at Garhi and when he reached near that place the constable asked him why he was not resigning from the Socialist Party and, on his refusal to resign, the constable gave him 4 or 5 blows with the cane and again asked him if he would resign. He then states that he told the constable that he would resign and it was then that he was allowed to go home. He further added that he went to the Thana and complained to the Sub-Inspector about the constable's conduct but the Sub-Inspector turned him out calling him a Badmash. In cross-examination he admits that he did not make any complaint against the Patwari. He further admits that the circle Inspector had come for investigation of his complaint against Durga constable. But he told the Circle Inspector that Durga Musalman had not at all beaten him but Gulzar Khan had beaten him. Such being the case the Circle Inspector had no option but to close the investigation about his complaint against Durga constable. It is hard to believe Harnarain about his alleged beating. No evidence about the beating of Sattulal has been produced before us. The allegations in particulars 2 and 3 of the list have not been established.

All these issues are, decided against the petitioner.

**Issue No. 10.**—This issue has not been pressed by the petitioner's counsel and there is no evidence to prove the allegations in clause (r) of the petition. This issue is decided against the petitioner.

**Issue No. 19.**—The petitioner's learned counsel on the basis of the admission of the Respondent, contends that the respondent committed the corrupt practice specified in section 123(8) of the R.P. Act, by employing certain Zamindars and Mukhias as his polling agents at this election and that although the petitioner did not allege that corrupt practice, either in his petition or in his list of particulars, the election of the Respondent No. 1 be declared void on the ground. The Respondent No. 1 as R.W. 127 admits in his examination-in-chief, that he knew Guthel of Bijore, Kishorilal of Newari and Chhadami of Tarichar Kalan to be the Zamindars and Mukhias of those places; and that he appointed those 3 persons as his polling agents because there was no bar against a Zamindar or a Mukhia being a candidate at the election in this district. The Respondent's learned counsel has produced before us the Tappa Praja Mandal Vidhan of 1939 of the Orchha Raj and the Dhara Sabha Vidhan of the same year and of the same Raj, the former to show that a Government servant was not eligible to stand at an election for the Tappa Mandal and the latter to show that the elected Chairman of the Tappa Mandal was to be *ex-officio* elected member of the Dhara Sabha. He has also produced before us three proceedings of the Orchha Praja Mandal of 1941 to show that Bhagwan Dass and Kapur Singh were the elected members of that Mandal. He then relies on the statements of Bhagwan Dass and Kapur Singh, as R.Ws. 86 and 87, to show that those two persons were then the Zamindars in Orchha Raj. His contention is that Zamindars were not considered Government servants in Orchha Raj and so the respondent's action in appointing the Zamindars was quite *bona fide*. Chhadamilal, the Mukhia of Tarichar Kalan, as R.W. 74 admits that he was the polling agent of the Respondent but he states that he did not work as such, but R.W. 61 admits that

Chhadamilal was the polling agent of the respondent and remained outside the booth from 8 P.M. to 4 P.M. i.e. throughout the polling hours. R.W. 114 admits that Kishorilall worked as the polling agent of the respondent at Mudara. He was the Mukhia of Newari. Guthel, R.W. 75, the Zamindar and Mukhia of Bijore at first stated that he was the respondent's polling agent but subsequently denied that fact but had to admit that he remained at the booth from 8 A.M. to 4 P.M. He asserts that his duty at the booth was to see that nobody talked with any other person at the booth and to report to the presiding officer any person who so talked. He admits that the Patwari and the other Zamindar of that village both remained at the booth for the whole of the day of polling. Under such circumstances there is absolutely no force in the contention of the respondent's learned counsel that Guthel's duty at the booth was to identify the voters and so he did not work as polling agent. The fact remains that all these 3 persons worked as polling agents for the respondent and the respondent had appointed them his polling agents in writing by filling up the Forms No. 6 about their appointment. The statements of Respondent's own witnesses show that Zamindars and Mukhias were appointed by the State. About their duties, Dhawel, R.W. 6, who is himself the Zamindar of Newari, admits that it is the zamindar who makes realisations of the Government dues, who gets orders issued by the Tehsildar served on tenants, to get proclamations issued by Tehsildar made in the village and who looks after the vacant Government buildings. He further states that the Mukhia of a village helps the police in investigation of crimes and the people in making the first information reports. Herprasad the zamindar of Asathi, as R.W. 15, admits that, at this election, it was an offence for a Zamindar to canvass for any candidate. This could be the case only because Zamindars were considered Government servants. The duties aforesaid certainly make a Zamindar or a Mukhia a headman or a village officer of the villages in Tikamgarh district. Such being the case, whatever a zamindar may have been considered by the Orchha Raj by the explanation (b) of section 123(8) of the R.P. Act "a person serving under the Government of the State" includes a village headman or any other village officer, by whatever name he may be called, employed in the State. The present election was held under the R.P. Act, 1951 and not under the Tappa Mandal Vidhan or the Dhara Sabha Vidhan of the Orchha Raj. The Respondent's learned counsel relies on Ex. A-126 to show that the petitioner also employed Har Prasad, Mukhia, as his polling agent at one of the booths and so he contends that the petitioner also did not consider a Mukhia to be the Government servant. The petitioner also appears to have employed Har Prasad, Mukhia, as his polling agent but that fact cannot be any ground for relieving the respondent from the consequences of the corrupt practice on his part. It can at best be said that the petitioner also committed the corrupt practice under section 123(8) by employing that Mukhia.

No doubt, the statement of R.W. 6 shows that a Mukhia is not paid anything for his services. On the basis of this statement the respondent's counsel contends that the Mukhias were not persons employed in the State. He relies on the decision of the Allahabad Tribunal published in the *Government of India Gazette*, dated May 29, 1953, page 1763, the question is as to what is the meaning of the word 'employ'. The word 'employ' means to make use of, to make use of the service of, to give employment to, to have or keep at work, to entrust some duty or behest, to have or keep at work. These meanings were taken from Webster's Dictionary but they are identical in any of the standard dictionaries. The word serve also means to work for. There is nothing in the definition of the words "employ or serve" which connotes the idea of remuneration. A service may be stipendiary or honorary. An Honorary Special Magistrate can exercise as much influence over the people as a stipendiary Magistrate. If remuneration is to be taken as the criterion for determining the employment of a person, an Honorary Special Magistrate also would not be called a person serving under the Government of the State and all such Magistrates would be free to canvass for any candidate they like. This would be against the spirit of the Act itself. We do not find ourselves in a position to agree with the Allahabad Tribunal on the point and hold that Mukhias are also village officers employed in the State.

Another contention of the respondent is that polling agents do not further the prospects of their principal at an election. A polling agent is an agent of a candidate according to section 79(a) of the R.P. Act. It is the primary duty of an agent to look after the interests of his principal. Hence the primary duty of a polling agent is to safeguard the interest of his candidate at the election. We hold that by employing Guthel the Zamindar and Mukhia of Bijore, Kishorilall, the Mukhia of Newari and Chhadami, the Mukhia of Tarichar Kalan, the respondent has committed the corrupt practice under section 123(8) of the R.P. Act.

Under section 100(2)(b) of the R.P. Act, 1951, the Tribunal is bound to declare the election of the Respondent to be void, and we hold that the petitioner is entitled to get the Respondent's election declared void.

About costs, the petitioner has failed to establish any of the charges levelled by him against the respondent in his petition or in the list of particulars and it is only on the admission of the respondent himself that the election is being declared void. The respondent had to meet the charges levelled against him in the petition which are proved to have been baseless. We consider it proper that the petitioner be made to pay the costs of the respondents' witnesses after excluding the costs of producing R.Ws. 18, 37, 38, 76, 103, 112, 115, 116 and 117 relating to Sunonia affair and that the petitioner should bear his own costs.

1. (Sd.) SHEO NARAIN VAISH.

2. (Sd.) L. N. MISRA.

According to the findings of the majority of the members.

#### ORDERED

The election of the Respondent No. 1 is declared void.

The Respondent No. 1 had committed the corrupt practice under section 123(8) by procuring the assistance of Guthel, the Zamindar and Mukhia of Bijore and that of Kishorilal, the Mukhia of Newari and Chhadami, the Mukhia of Tarichar Kalan.

The petitioner shall bear his own costs and the respondent shall get Rs. 533 as his costs from the petitioner.

10th November, 1953.

1. (Sd.) SHEO NARAIN VAISH, *Chairman*

2. (Sd.) L. N. MISRA, *Member*.

3. (Sd.) P. LOBO, *Member*.

P. LOBO.

#### DISSENTING JUDGMENT (E.P. NO. 258 OF 1952)

As I have, with due respect, disagreed with my colleagues on some issues or portions of some issues I give below my reasons for the same.

*Issues Nos. 8, 9, 12, 13 and 14.*—In paragraph 5, clauses (p) and (q) of the petition it was alleged as follows:—

“(p) Because the Vindhya Pradesh Government and its officials of all ranks were favourably inclined towards the Congress party and all the officials openly and actively canvassed and committed corrupt practices, exerted undue influence on the voters intimidated them to vote for the Respondent No. 1.

(q) Because the Respondent No. 1 stood as Congress candidate and the whole of the Congress organization including its members, workers and sympathisers were working and supporting the Respondent No. 1 and they should all be deemed to be his agents, all of them openly intimidated and exerted undue influence on the voters to vote for the Respondent No. 1 and to refrain from voting for the petitioner. This state of affairs prevailed extensively at the election owing to which the election has not been a free and fair election.”

It was the case of the petitioner, urged his counsel, that if he could substantiate the allegations (p) and (q) then he would have made out a case under section 100(1)(a) of R.P. Act, 1951, for declaring the election to be wholly void. He qualified this by saying that if he could establish undue influence on a wide scale then there was no need to particularise any individual corrupt practice in the petition or list. It was the case of the petitioner that he could show that undue influence, for the benefit of the respondent, prevailed extensively in this constituency and the petitioner mentioned 10 incidents of undue influence. Each of these incidents will be considered one by one.

1. At Durgapura one Shri Bhargava, a Tehsildar, asked some sub-tenants about fifteen days before the poll to pay the rent of their fields directly into the Treasury. Four witnesses were examined P.W. 1, P.W. 2, P.W. 15 and P.W. 16 who swore that Bhargava demanded rent from them and on their remonstrating that the rent had been already paid to Durgaprasad, the tenant who always collected and paid in the rent, the Tehsildar retorted with threats for their arrest. One Dhawal, Zamindar of Newari, R.W. 6, was asked by Bhargava to

explain matters to them. Dhawal took the so called defaulters outside the Tehsil building and said that if they vote for the Congress, no harm would come to them. Dhawal was examined by the Respondent to deny this allegation, and he prefaced his evidence by giving his occupation as a Commission Agent, so as to avoid his connection with Government as Zamindar. The truth was quickly wrought out. Durgaprasad, R.W. 3, said that he had paid the rent into the treasury in the first week of January but did not bring the receipt as nobody asked him to do so one piece of evidence which would have falsified the entire allegation.

Bhargava as R.W. 103 denies that he ever demanded rent as alleged. He is one of those officers who received an accelerated promotion after the election, in a department under the Respondent. This may be quite innocent but the coincidence is remarkable as I shall show later of another officer, in similar, if not worse circumstances.

The second incident is at Asathi where it is alleged that Bajpai came and addressed the villagers telling them that life would become difficult if they did not cast their votes in the box of bullocks. An attempt was also made to show that Bajpai had leased out a particular piece of land on the promise that the lessees would cast their votes in his favour. P.Ws. 3, 4, 6, 7, 21, 25 and 26 were mentioned by learned counsel as giving support to the above allegations. The Respondent's witnesses were R.Ws. 8, 9, 10 and 15 the last one being Herprasad, a Zamindar. The truth of the earlier allegation that 'life would become difficult' was hard to dispel.

The third incident is at Nehgawan Khas where P.W. 14 Ganpet Singh avers that outside the booth the Congress workers and Jidu Mahton, Zamindar, told the voters that if they cast their votes for the Socialist Party they will have to face difficulties. Ganpet Singh was a worker for the Socialist Party and an agent of the Socialist candidate. There were four witnesses examined by the Respondent R.Ws. 21, 22, 23 and 24 to deny this allegation. R.W. 21 was his polling agent.

The fourth incident is alleged to have taken place at Mudara where the Respondent is said to have sworn by Ganges water that if he was returned he would take one of the residents of Mudara into Government service; and he then asked persons present to take the Tulsi Ganga oath that they would vote for him. P.W. 17 supported this allegation while P.W. 18 said that Government employees took the ballot box bearing the bullocks symbol to every house in Mudara and were asking the people to cast their votes in that box. They also said that "it will not go well" with those who so failed to cast their votes. To meet this allegation four witnesses were examined by the Respondent, viz., R.Ws. 5, 26, 27, 28 and 39. Leading questions were unfortunately put by counsel to R.Ws. 27 and 28 but of the large number of persons mentioned by the petitioner as being connected with this incident only R.W. 27 and R.W. 28 who is a Mukhia were tendered for rebuttal.

The fifth incident bearing on the allegation of under influence is at Ghugwa Mahgawan where polling took place. This incident seeks in a way to corroborate the first incident as P.W. 2 and P.W. 15 give out: that in case they did not vote for the Congress, they would be locked up, a threat, it will be remembered, given earlier at the Tehsil building and now repeated at the polling station. Nannu, Zamindar, who repeated the threat was examined as R.W. 64 and he denied having canvassed for the Congress. In this he was supported by R.W. 25, who also said that Nannu was only identifying voters at the booth. In his cross-examination Nannu declared that one Herprasad was the polling agent of the Respondent but a few sentences later resiled and said that he did not know whether Herprasad was a polling agent of the Respondent or of the petitioner.

The sixth incident was alleged to have occurred at Gidkhini where P.W. 19 alleged that his Zamindar Jagannath told him a day before the polls that he "should cast vote in the box of bullocks or he would be beaten with Danda". The next witness P.W. 20 Balkhandi alleged that Hardas, Thakurdas and Deoki Nandan canvassed for the Congress with this threat in case people did not do so they would be badly treated. The last three named persons were cited as defence witnesses and they averred to everything else except their own activities, as alleged by Balkhandi. While Deoki Nandan said that the Respondent came to his village a month before the polls, Hardas swore that "he did not at all come to my village".

At Sendhri is the alleged seventh incident. Bhagwat Narain and Pragilall, P.Ws. 30 and 31, mention that Bajpai came to Sendhri and got the villagers to take an oath on Tulsi Ganga that they would vote for him. At Sendhri, Bhargava, Tehsildar, mentioned previously got Ramsewak an agent of the petitioner to deposit his rent within two hours by holding out threats, according to P.W. 30.

To meet the first allegation of religious pressure no less than seven defence witnesses were examined, viz., R.Ws. 40—44 and R.Ws. 48 and 49. Strangely enough none of these witnesses were referred to by the prosecution witnesses, in whose cross-examination too the names of the defence witnesses were not even suggested as being present when the oath was administered.

The eighth incident is at Sakat Bhairon where religious pressure was said to have been again exercised and in addition threats of being turned out of the village; P.Ws. 32 and 34 accused Bajpai of administering the Tulsi Ganga oath; P.W. 32 is a member of the Socialist Party. P.W. 34 mentioned that Govind Singh, Perbat Singh, Thakurdas Bania and Haru Tiwari told the villagers that "it would not be good" if they did not vote for the Congress. This was clarified by them saying that they would stop the grazing of their cattle, taking of water from wells and even turning them out of the village if the villagers failed to vote for the Congress.

The Respondent produced Thakurdas, R.W. 58 and Moti, R.W. 59, to meet the petitioner's allegation. Thakurdass denies that Bajpai even addressed a meeting at Sakat Bhairon but is silent as to his own activities regarding the several threats given by him along with some others. Moti is a sweeper and he has nothing to say regarding the oath and other threats.

The ninth incident refers to Orachh. P.W. 46, Chaturbhuj, the polling agent of the petitioner averred that one Sannu Lal Napit and the father-in-law of Bajpai threatened the voters at the booth declaring that "Bajpai was a Minister before and will again be a Minister and anybody who does not vote for him will be seen to". Sannu Lal Napit as R.W. 99 denied all the allegations and further gave out that Bajpai had no father-in-law at the time. A suggestion was made in his cross-examination that perhaps Chaturbhuj meant uncle-in-law instead of father-in-law. Sannu Lal Napit was a forest guard in 1942 and in December, 1952 or January, 1953 was appointed a member of the Provincial Transport Authority. After the election he along with one Krishna Gopal had received taccavi of Rs. 2,500.

The tenth and last incident is at Sunonia which gave rise to a considerable amount of evidence. Briefly put the allegation is that at the time of polling Bajpai went inside the booth along with some of his companions, and there asked the voters to cast their votes in the box of bullocks. Shiamlal, P.W. 39, the polling agent of the petitioner asked Bajpai not to canvass at the booth and got this reply from Bajpai, "Be quiet, my votes will be cast and your phool (meaning ashes)". The presiding officer, P.W. 33, Ramsahai is then said to have asked the Respondent to take his men and motor with the flag away from the booth and not to canvass at the booth. Bajpai is credited with the following statement, "we will not go, we will canvass at this very place". The presiding officer asked the police to remove Bajpai and his supporters but the police declined. There was a hot exchange of words between Bajpai and the presiding officer who was led to issue the following telegram, Ex. 60, to the Returning Officer, "polling work impossible, kindly come immediately, situation critical". This telegram appears to have been sent from the polling station round about 3-30 p.m. on 27th January and was despatched from Barwasagar Railway Station at 17-30 hours. Barwasagar is some distance from Sunonia.

Later that same evening at 19-5 hours Bajpai sent a telegram from Barwasagar marked Ex. 66 to the following effect: "Presiding Officer Baswan and Sunonia, district Tikamgarh illegally harassing Congress workers causing panic amongst voters immediate action solicited for peaceful voting on 29th at Bhailsa".

Ramsahai, the presiding officer, was examined as P.W. 33 and his evidence makes sorry reading. He stated his evidence by saying that he did not remember if any disturbance took place at the Sunonia polling station. Then to quote his own words: "I sent a telegram to the Returning Officer, Tikamgarh about a disturbance (then states). It was not about any disturbance. I had run short of money, chapra and some other things which I now forget". Ramsahai gave this shortage as the reason for his telegram. With this *volte face* he was asked to be declared hostile and cross-examination by the petitioner's counsel. His cross-examination only revealed the depths to which Ramsahai could go in telling lies. Although a schoolmaster in private life, he seems to have no regard for truth. The greater pity was that besides this monster of falsehood, N. N. Chaturvedi, the Returning Officer and even S. N. Bhargava, Tehsildar, attempted to buttress the lying edifice which Ramsahai built for those whom he sought to favour, but whose very foundations were cracked by the Respondent in his evidence. As R.W. 127, Bajpai for the first time gave out that his polling agent inside the booth had complained "that females were being asked the names of



their husbands and they were hesitating to name their husbands". The presiding officer had declined to accept Bajpai's suggestions that women voters should not be asked their husband's names and Bajpai gave this as his reason for the telegram, Ex. 66. These are matters which the presiding officer did not even reathe about.

In sifting this evidence, the inference is irresistible that conduct as displayed at Sunonia by Bajpai is certainly one of influence. "The law cannot strike at the existence of influence", says Whiles J. in Lichfield (1 O'M abd H, 28) reproduced in Hammond's Election cases 1920-35 at page 353. "The law cannot more take away from a man who has property or who can give employment be insensible but powerful influence he has over those whom, if he has a heart he can benefit by the proper use of his wealth than the law could take away his honesty, his good feeling, his courage, his good looks or any other qualities which give a man influence over his fellows. It is the abuse of influence with which alone the law can deal". Bajpai's shocking conduct at the polling booth was indeed an abuse of his influence. One would have expected better of a man who had been guiding the destinies of his people as a Chief Minister in Orissa State and later as a Minister in the Bundelkhand Ministry. To overawe and to terrorise those who vote and those who conduct elections cannot be labelled as innocent. All the nine incidents previously mentioned in which either the Respondent, his agents or Government employees who were shown to have taken part on Respondent's behalf cannot be brushed aside as frivolous or baseless. Nor has come of that evidence tendered by petitioner to be rejected because some of the witnesses belonged to the Socialist Party. Minor discrepancy will always exist. When all the evidence of the nine incidents and the climax at the tenth comes to be weighed, leaving aside all exaggeration and embroidery one cannot escape the conviction that there has been both direct and indirect interference on the part of the Respondent and his agents with the free exercise of the voters' rights in Newari constituency.

To set aside an election is bad enough but to find methods as adopted in this constituency and as depicted above for ensuring success is deplorable. Even Government servants joined in or were made to join in what will always be considered as questionable activities during an election. At least their conduct ought to be above suspicion in order to ensure a free and fair election. Ramsahai, the presiding officer found himself pitchforked from being a teacher in an Anglo-Vernacular Middle School to be a professor in an Intermediate College, soon after the election. This may be an accident but every man has his price.

To the objection that no particulars of any one incident were given in the petition besides what was stated in (p) and (q) of para. 5 it is evident that undue influence prevailed extensively in this constituency. It so happens that in this particular election the result would be the same whether a finding is given under section 100(1) or 100(2) of the R.P. Act, 1951. I, therefore, hold that the Respondent did commit a corrupt practice by exercising undue influence himself or through his agents practically throughout the constituency as defined in section 123(2) of the R.P. Act, 1951.

*Issues Nos. 1, 2 and 5.*—It is my view that there has been no defect in the design or manufacture of the ballot boxes. One of the two persons, viz., Jang Bahadur Singh who demonstrated before the Tribunal how the ballot boxes could be opened without damaging any of the seals or breaking the twine admitted that if the wax seals were put quite close to the knots on the lid then it would be impossible to open the box in the manner he and his companion Jai Singh did. I have discussed this at some length in E.P. No. 257 of 1952. *Vidya Vati Vs. Mahendra Kumar*, dated 10th November, 1953. As there is no inherent or intrinsic defect in the manufacture of the ballot boxes I hold that non-compliance with any election law or rule has not been established.

*Issue No. 7.*—I am of the opinion that the disqualifications for the membership of a State Legislature as laid down in R.P. Act, 1951 are not applicable to Part 'C' States.

There has been a special enactment in this regard by Parliament called Government of Part 'C' States Act, 1951, which derives its force from Article 240 of the constitution.

Moreover in section 8 of the Part 'C' States Act, 1951, Part II of the R.P. Act, 1951, has been deliberately omitted. With this statutory omission, there is no point in looking at the scheme and framework of the R.P. Act, 1951 or of the Part 'C' States Act, 1951. I have dealt with this aspect of the law in E.P. No. 257 of 1952, *Vidya Vati Vs. Mahendra Kumar*, dated 10th November, 1953. Further discussion is unnecessary as I hold that the petitioner has failed to show any legal basis for his allegation.

Dated 10th November, 1953.

(Sd.) P. Lono, Member.

## ANNEXURE I

## IN THE COURT OF ELECTION TRIBUNAL, NOWGONG, V.P.

## PRESENT

1. Shri S. N. Vaish, *Chairman*.
2. Dr. L. N. Misra, M.A., LL.B., Ph.D., *Member*.
3. Shri P. Lobo, Advocate, Supreme Court, *Member*.

ELECTION PETITION No. 258 OF 1952.

Shri Laxmi Narain Naik s/o Shri Gopal Das, Village Nim Chauni, District Takamgarh—*Petitioner*.

*Vs.*

1. Shri Lala Ram,
2. Shri Sita Ram,
3. Shri Shyam Lal,
4. Shri Sunnu Lal—*Respondents*.

## ORDER

This is a petition by Laxmi Narain Naik challenging the election of Respondent No. 1 to the Legislative Assembly of Vindhya Pradesh from the Newari Constituency which is single member constituency and also the election as a whole. The grounds on which the petition has been based are defective Ballot Boxes, tampering with them, undue influence non-compliance with the rules and orders by Government officers, and the other illegalities and corrupt practices on the part of the Respondent No. 1 as set forth in the petition and its List in detail.

The Respondent No. 1 alone contests the petition on the various grounds set forth by the petitioner. He has further alleged reasons why certain matters mentioned in the petition should not be allowed to go to trial.

From the pleadings of the parties various issues were framed out of which the following have been first taken up for decision.

11. (b) Should the petitioner be debarred from producing evidence about the return being false by reason of his failure to give full particulars as required by section 83(2) of the Representation of People Act.

15. Whether the allegations embodied in clauses (1), (p) to (r) of para. 5 are so vague and general that they do not comply with section 83 (1) and 83 (2) of the Representation of People Act and is petitioner not entitled to prove them?

16. Whether the charges mentioned in Nos. 1 to 4 of the list of particulars are not possessed of such essential details as comply with the requirements of section 83(2) of the Representation of People Act and is the petitioner not entitled to prove them?

17. Does the association of the reliefs prayed for in the petition render the petition unmaintainable in law?

18. Have the petition and the particulars appended thereto not been properly verified? If so, what is the effect?

## FINDINGS

*Issue No. 11(b).*—The petitioner's allegation is contained in clause(s) of para. 5 of the petition which reads as follows:—

"Because the return of election expenses filed by the Respondent No. 1 is false in material particulars and has not been filed in the manner prescribed."

The Respondent No. 1 contends that this allegation is vague and general and the petitioner has not given, in the List appended to the petition, any particulars of the items in the return, on the basis of which he has made this charge against the Respondent No. 1. The term "Corrupt practice" has been defined in section 2(c) of the R.P. Act, 1951, as follows:—

"Corrupt practice means any of the practices specified in section 123 of section 124."

Section 124(4) constitutes the making of any return of election expenses which is false in any material particulars a corrupt practice.

Section 83(2) provides that the petition shall be accompanied by a list setting forth full particulars of any corrupt practice which the petitioner alleges. It is thus obvious that the petitioner was bound to give in the List full particulars of this corrupt practice alleged by him and thus, so far as the Commission of this alleged corrupt practice is concerned, the Tribunal is of the opinion that the petitioner cannot be allowed to produce evidence about the return being false in material particulars.

*Issue No. 15.*—Regarding clause (b) of para. 5 of the petition the Respondent's contention is that the petitioner has not given any particulars about this allegation in the List and hence there has been no compliance with section 83(2) and the next contention is that it lacks in essential details and is too vague to form the subject matter of trial. He further complains that the petitioner ought to have specified the names of the persons who committed these acts.

The petitioner's learned counsel in his statement under Order X, Rule 2, C.P.C., stated that these acts were committed in respect of the ballot boxes of all the polling stations after the time of the polling and before the counting was over, at the polling stations, during transit and the places, where they were stored. He contends that as these acts were not committed during polling hours they did not amount to a corrupt practice as specified in section 123(4). He, then, continues to say that no other clause of section 123 contemplates tampering with ballot papers and hence this allegation of the petitioner does not come within the purview of any of the corrupt practices specified in sections 123 and 124 or as an illegal practice specified in section 125. Hence he argues that no particulars required by section 83(2) are called for. According to the petitioner these allegations amount to a non-compliance on the part of the Returning Officer and his staff, with the rules and orders relating to election, which has materially affected the result of the election. This contention seems to be sound.

Regarding the allegations in clauses (p) to (r) of para. 5, the Tribunal finds that there is material both in the petition and in List which when taken together, gives sufficient notice to the Respondent as to the charges which he has to meet and therefore they can go to trial. We are of the opinion that the allegations are not vague and general for the purposes of section 83.

*Issue No. 16.*—This issue can be answered in the same manner and for the reasons given in issue No. 15 above. The Tribunal holds that the charges mentioned in Nos. 1 to 4 of the List of particulars are possessed of sufficient details to go to trial. The petition and the List have always to be read and taken together.

*Issue No. 17.*—This Tribunal already observed, in Election Petition No. 257 of 1952, that the directions in section 84, R.P. Act, 1951, are permissive and not mandatory. The mere fact that the petitioner has prayed for two reliefs cannot entail dismissal of the petition and the Tribunal therefore, decides this issue in the negative.

*Issue No. 18.*—Section 83, R.P. Act, 1951, provides that the petition and the List shall be verified in the manner laid down in the C.P.C. for the verification of pleadings. Order 6, Rule 15(2), C.P.C., is as follows:—

"The person verifying shall specify, by reference to the numbered paragraphs of the pleading, what he verifies of his own knowledge and what he verifies upon information received and believed to be true."

The petitioner has verified the contents of paragraphs 5(a) to 5(b) of the petition and the contents of the particulars Nos. 1 to 4 of the List partly on his personal knowledge and partly on information received and believed to be true. The aforesaid provision of the C.P.C. requires verification by reference to the numbered paragraphs of the pleading and not "Sentence Wise". If the petition and the List contain certain paragraphs which have several sentences the contents of some of which are based on petitioner's personal knowledge and others on information received and the petitioner has mentioned that such paragraphs are partly based on personal knowledge and partly on information received and believed to be true, he has, in the opinion of the Tribunal substantially complied with the provisions of the C.P.C. and the petition and List have been properly verified.

1. (Sd.) SHEO NARAIN VAISH, Chairman.
2. (Sd.) L. N. MISHRA, Member.
3. (Sd.) P. LOBO, Member.

Nowgong, V.P.;

Dated the 24th January, 1953.

## ANNEXURE II

IN THE SUPREME COURT OF INDIA  
CIVIL APPELLATE JURISDICTION

CIVIL APPEAL No. 54 OF 1954

Lala Ram—Appellant.

*versus*

Laxmi Narain Naik and others—Respondents.

Appeal by Special Leave granted by this Court by its Order, dated the 1st March, 1954, from the Judgment and Order, dated the 10th November, 1953 of the Election Tribunal, Nowgong (Vindhya Pradesh) in Election Petition No. 258 of 1952.

*The 18th day of October, 1954*

## PRESENT

The Hon'ble Mr. Justice Bijan Kumar Mukherjea.

The Hon'ble Mr. Justice Vivian Bose.

The Hon'ble Mr. Justice T. L. Venkatarama Ayyar.

*For the Appellant*—Mr. Nanak Chand Pandit, Senior Advocate (Messrs. Jagdish Chand and C. P. Lal, Advocates, with him).*For Respondent No. 1*—Mr. N. C. Chatterjee, Senior Advocate (Mr. G. C. Mathur, Advocate, with him).

## JUDGMENT

The Judgment of the Court was delivered by

Venkatarama Ayyar, J.—This is an appeal by special leave against the decision of the Election Tribunal, Nowgong, setting aside the election of the appellant to the Legislative Assembly, Vindhya Pradesh, from the Newari Constituency solely on the ground that he had employed certain village officers as polling agents, and had thereby committed a major corrupt practice under section 123(8). We have held in Civil Appeal No. 52 of 1954 and in C.M.P. No. 641 of 1954 that such appointment does not, without more, contravene section 123(8). Following that decision, we allow the appeal, set aside the decision of the Election Tribunal, and dismiss the election petition with costs throughout.

(Sd.) B. K. MUKHERJEA, J.

(Sd.) VIVIAN BOSE, J.

(Sd.) T. L. VENKATARAMA AYYAR, J.

*The 18th October, 1954.*

[No. 19/258/52-Elec.III/19348.]

By Order,

K. S. RAJAGOPALAN, Asstt. Secy.